graduated rate increases that have not fully taken effect, or maintained lower rates anticipating a new marketing effort or rebuild.

There could be many other reasons as well. If the rates charged by the operator are below the norm there is no justification for restricting that operator's ability if he so chooses, to attain the norm. While it may sound like a beneficial rule on its face for consumers, it may in fact be just the opposite. For instance, should the operator be prevented from increasing rates to the norm in order to create cash flow for a rebuild? Would this benefit consumers? On the contrary, it would hurt consumers because their system would not be able to meet the capital needs, as an example, for upgrading to the new compression technology that will be introduced in systems shortly. They have already benefitted from lower than benchmark zone rates -- to cap those rates may provide short-term pleasure, but harm the long-term infrastructure. That is simply not good industrial policy (which is, after all, what this is all about)!

A SIMPLIFIED "COST JUSTIFICATION" PROCESS IS NEEDED

Cost justification must be permitted. There can be no dispute that a cable operators should have the right to justify rates that fall outside the basic service benchmark zone of reasonableness. The Commission itself has enumerated many of the variables which could result in one system or another or

particular companies not falling within the zone but potentially being able to cost justify a higher rate. There is a particular danger, however, in this approach for smaller systems.

Small systems need a simplified process. Obviously a cost justification will be far more complex, time consuming and costly for the operator and the regulator, whether at the local level or at the Commission. The danger, however, is that it is precisely those systems and owners, the "smaller operators", who can least afford to engage in cost justification who may be most subject to it. This, of course, depends on how effective the benchmark formula is in considering such things as size, density, availability of alternate revenue sources, cost of capital, higher cost of programming etc. If the benchmark formula does not adequately take these variables into account then it will inevitably be those with low density (thereby higher per-subscriber costs), the inability to negotiate for lower cost capital or lower cost programming, etc. who will be forced out of the benchmark reasonableness zone and into cost justification. This must be just as worrisome to the Commission as it is to the smaller operators since cost justification necessitates an experience, staff, and knowledge level that is far beyond most small communities. While some small communities may well be "certifiable" with regard to rate regulatory ability in so far as applying a benchmark formula is concerned, they are unlikely to be eligible for certification regarding cost justification showings which, CATA suggests, would require a showing of

accounting expertise necessary for rate making proceedings. We urge the Commission to consider two certification standards in this regard. What this means, however, is that many if not most of the "cost justification" efforts -- whether they go to the community first and then the Commission on appeal or directly to the Commission will impose the highest burden on the Commission.

CATA supports the notion put forward by the Commission that one way to resolve this problem is to provide a simplified cost justification regime for small systems and small communities. Suffice it to say that most small system operators (and, we suspect, most small community officials) could not even answer the cost justification questions in this rule making proceeding for lack of understanding of the terminology, let alone engage in a meaningful cost justification process at the local level. The same is true for the complex set of questions laid out in Appendix B of the Notice. This is all the more true because the cost of service analysis provided by the Commission, in the main, seems to apply on a system basis whereas many of the small systems of smaller MSOs are operated on a "cluster" basis with shared expenses for service technicians, etc. This simply complicates the issue that much more if challenges or appeals are made on a system by system basis.

Most of CATA's "small system" members today are not single system owners. Instead they are companies with a significant total number of subscribers spread out over a massive number of franchise service areas with a daunting number of headends serv-

ing those areas. For example, the current Chairman of the Board of CATA is the Chief Operating Officer of Triax Communications. A company serving some 348,000 subscribers from 466 headends and beholden to 1075 different franchise authorities! If each of those different authorities initiated a proceeding that required cost justification of Triaxs' rates in each community because they exceeded the benchmark zone, assuming it took an average of 3 public meetings in each proceeding to establish a "cost justified" rate, Triax would have to attend 3225 meetings each year just to establish the reasonableness of its rates! The extra personnel, legal fees etc. that would be required would be enormous -- large enough, indeed, to have a material effect on the cost of doing business for the company which in turn would necessitate higher fees to consumers to pay for the cost of regulation, which, in the first instance, was designed to restrain rates. Clearly this won't work.

Special cost justification for small companies. CATA suggests an alternative. While this alternative logically could apply to all companies offering cable service, we present it here focused only on those "smaller" companies serving subscribers through multiple headends and multiple franchises. The exact qualifying numbers that should apply are a subject the Commission could consider in a Further Notice should the concept be adopted. At the very least we would suggest that multiple system owners serving subscribers predominantly in franchise areas with a subscriber base of 3500 or less should be included in this

category.

For such systems CATA urges the Commission to consider a blanket proceeding wherein the company can present cost data to the Commission showing that the company as a whole, with regard solely to its cable television system activities is neither deriving excessive profits nor undue costs and therefore make a unified finding that the rates being charged by the company can be considered reasonable. In most cases these companies will probably show that they in fact are not making any profit -- but are instead paying off high debt loads as a result of high cost asset purchases or higher than usual costs of capital.

The fact that some can today argue that the systems were purchased at too high a price is irrelevant to the fact that the debt exists and must be paid. Twenty-twenty regulatory hindsight will not justify disallowing a risk-taking entrepreneur the right to recover costs. That would define a confiscatory rate structure. Certainly it is true that had the cable industry developed under the protective wing of monopoly rate regulation or were it a "necessary utility" that is taken by a vast majority of the public then concerns about asset purchases and debt structure would be appropriate.

However this is not the case with cable. The Commission is being asked to design a rate regulatory program for an industry that developed solely through the entrepreneurial risk marketplace. CATA does not dispute that subscribers in some instances are indeed paying higher prices because of an inflated

valuation of the market in the late 1980s. This is true of many businesses today which are suffering from the aftermath of a governmentally promoted economic "boom" during that period.

Consumers and American workers are also feeling the negative effects of that period. Massive layoffs of workers, for instance, are attributed to the same miscalculations in other businesses that took place in the cable market. There is no logic nor economic sense, however, to saying to those companies that they cannot now "downsize" to adjust to the new market reality. Similarly it would create economic chaos for the Commission to design rules that disallowed rates sufficient to pay debt. Indeed we firmly believe that such a rate determination would be legally insupportable.

Thus, as a simplified approach to cost justification, we urge the Commission to consider allowing qualifying cable system operators to present the Commission with sufficient evidence to show that the financial performance of the entity as a whole is reasonable and creates a presumption of reasonableness regarding the individual system rates. There is no denying that cable systems owned by multiple system operators function in a cross subsidizing manner. Were that not so, for instance, the citizens of Homestead, Florida would never be able to afford cable service again once their town is rebuilt following hurricane Andrew. It is only because an MSO can spread its costs and risks across many communities that these communities benefit in the first instance. The cable industry is the first industry to totally build a

"utility - like" infrastructure without government subsidy and without a guarantee against competitors. The Commission should consider, particularly for "smaller" operators the total effectiveness, performance and reasonableness of the entity as one alternative to multiple rate proceedings.

REGULATORY PROCEDURES MUST BE EQUITABLE

The certification process. Assuming a franchising authority determines for whatever reason that the rates of its cable systems should be regulated, the process by which this occurs becomes of vital importance to the cable system, the franchising authority and certainly the Commission. Everyone benefits if the Commission develops procedures designed to achieve a reasonable result in the first instance, rather than choosing shorthand procedures that will produce only quick decisions, many of which will have to be the subject of future proceedings. We remind the Commission that initial certification requests based on a newly adopted regulatory scheme are likely to be fraught with difficulties. In most instances, the Commission will not have the information necessary to realize when it has been presented with a defective or inaccurate application. For this reason, as well as from a sense of basic fairness, we urge the Commission to reject its tentative conclusion that certification actions should be based solely on a local authority's filing.

Clearly, the Commission is attempting to formulate a certification process that results in rapid turn-around. The Commission is interpreting the Cable Act to require a decision on a certification filing, yes or no, within 30 days. But the Act states merely that certification "...shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that [the provisions of Section 623(a)(3)(A-C) have not been met]." In other words, the Commission is not bound to rush to judgement within 30 days if it doubts whether the local authority has a regulatory scheme consistent with the Commission's requirements, or if it has reason to believe a local authority does not have the ability to regulate as set out in its certification filing.

The Commission is concerned that if it establishes an "expedited" process that takes a reply from a cable operator into consideration it will be unable to render judgement within a 30 day period. But, as indicated, if the Commission is led to believe, perhaps from a filing from the affected cable system that the certification filing is flawed, it need not act precipitously at all. Under these circumstances, the Commission could, and should, take the opportunity to resolve its concerns. Certainly, the Commission should not, as suggested in the Notice, rely on subsequent revocation proceedings to undo certifications that might be granted hastily, in error. We note further, that if the Commission adopts CATA's proposal to treat certification

requests from larger communities first, it will become all the more important that the Commission's initial decision-making process be one that offers all interested parties the opportunity to be heard and that insures against precipitous judgement.

Revocation proceedings. Inevitably, it will fall to the Commission to preside over proceedings to revoke grants of certification. In its Notice the Commission has agreed that Section 623(a)(5) of the Act certainly requires revocation when a local authority's non-compliance involves a violation of Section 623(a)(3)(A) (when local or state laws are inconsistent with Commission regulations), but suggests that some lesser action might lie if the non-compliance involves Section 623(a)(3)(B) or (C) (having personnel needed to regulate, and having procedures that afford an opportunity to be heard in rate proceedings). Of course, if the Commission takes the care, as we have suggested above, to grant initial certifications, there are likely to be revocation petitions filed only in cases where either the local authority has not acted as represented to the Commission, or where the local authority has changed its circumstances and can no longer comply as it affirmed it would. In any event, CATA maintains that a revocation proceeding would be appropriate in any case in which an initial certification would not have been granted, and not only in cases where there has been a violation of Section 623(a)(3)(A). Of course, we recognize the Commission's reluctance to revoke certifications, because then

regulation of basic rates becomes the Commission's responsibility.

Even if the Commission has reason to believe that a local authority's certification might be subject to revocation, it need not reflexively issue an Order to Show Cause. There are always intermediate steps at the Commission's disposal. The Commission can inform a local authority how to come into compliance with the Act and give it the opportunity to do so. But if the Commission decides that it must revoke, it should not attempt to limit the grounds only to violations of Section 623(a)(3)(A).

Procedures for review of basic rates. The issue of how and when a local franchise authority initially reviews a system's basic rates or proposals for basic rate increases is of particular importance because, marketplace vagaries aside, cable systems must be able to anticipate revenues with some degree of certainty. A simple and expeditious process is essential, one that allows rates to become effective on a date certain. The delays and uncertainties associated with local rate regulation was one of the reasons that an earlier Congress did away with rate regulation. Let past be prologue. Now that rate regulation has returned, it is incumbent upon the Commission to develop procedures that will not lend themselves to unnecessary delay.

It is for this reason that CATA views with consternation any proposal that likens the rate review process to the Commission's tariff proceedings where the Commission is given 120 days to act on proposals. To the extent that the Notice considers this a

"relatively brief period" for review, we must, respectfully, but strenuously, disagree. Together with the Act's requirement that a cable operator give the local authority 30 days notice of a rate proposal, it could easily take five months without a decision. Clearly, this is not acceptable.

Any of the alternatives proposed by the Commission is preferable. As the Commission notes, one might infer that a local authority is supposed to act within the 30 day notice period prescribed by the Act and, absent any decision, proposed rates are to be permitted to go into effect. CATA supports that logical reading of the law. While the Commission voices concern that 30 days might not be enough time to obtain views and take whatever other procedural steps are necessary in order to justify ratemaking decisions, it can always permit local authorities to make adjustments at a later date. Ratemaking proceedings will vary directly with the simplicity and reasonableness of the Commission's benchmarks. In the first instance, therefore, it is within the Commission's power to directly affect the complexities and delays of local rate proceedings by adopting straightforward procedures for determining rates.

Complaint procedures for cable programming tier rates. Looming among the unenviable tasks foisted on the Commission by the Cable Act is the necessity of dealing with cable programming tier rate complaints that may be filed by any cable subscriber. There is more than just a potential for mischief here. Regardless of how

reasonable upper tier rates may be, Congress has created a federal forum for the disaffected - and mandated that the Commission make a reasoned judgement in each case. Of course, for those systems whose service is offered in one, untiered, package there is no problem because then there will be no separate programming service rates. But, as the Commission itself has recognized, in the past "...an operator may have been offering a basic service consisting of more channels than are now required under the Cable Act's definition of basic service. It may now effectively be required to split its former basic service into the Act's formulation of basic service and an expanded basic tier." (See NPRM, para. 121)

Indeed, this is exactly what systems may do (and are, in fact doing, to the great displeasure of those who have not understood the implications of the Cable Act), and when it happens there is little question that the Commission will be the recipient of thousands and thousands of letters complaining about rates. The Commission's own suggestion for a process to deal with such complaints is less than satisfying. Here is a case where even if the Commission adopts the clearest and simplest set of benchmarks, it will not be able to fend off an onslaught of mail.

It is understandable that one of the Commission's proposals is to require each complainant to first obtain a decision from a local authority. Apart from the dubious legality of such a requirement, it must be noted that in many cases there will be no

local regulatory body to complain to (for instance, in those instances where certification has not been sought), and even where a local authority exists, its expertise, by definition, to say nothing of the requirement of the Cable Act, is limited to regulation of a system's basic tier rates and nothing more. We also appreciate the Commission's suggestion, for the benefit of smaller systems that the Commission might make a decision based purely on a prima facie case made by a complainant and notify the cable operator only where it has decided a prima facie case exists. While this may prove a useful alternative, we must view with some discomfort a complaint process without initial involvement of the cable system allegedly at fault.

CATA has what may prove to be a more fruitful suggestion that will in no way discourage "real" complaints, and might, at the same time, provide a process that will lead to complaint resolution, perhaps without involvement of the Commission at all. We propose simply that a complaint not be sent to the Commission until it has been sent to, and answered by the cable operator. In the case of a misunderstanding as to what the regulations are (and in so many cases, complaints will be for just such a reason) the matter may well be settled by the cable system. Where, however, the complainant remains dissatisfied, the Commission should require that the complaint, <u>together with the response received from the cable operator,</u> be sent to the Commission. In this way, each complaint will be accompanied by the cable

operator's answer. The process will be accelerated and the Commission may then determine if further inquiry is necessary.

ADDITIONAL COMMENTS

Installation costs. As the Commission notes, many cable operators charge less than the actual cost for installation of equipment. Rather, these systems include installation costs in monthly fees to all system subscribers. In many cases, for promotional purposes, installation is offered at no cost in an effort to increase the subscriber base. The larger the subscriber base, the more revenues can be generated and, ultimately, the system can afford to offer more services to subscribers. Although the Cable Act indicates that the Commission should establish installation rates on a cost basis, it is not at clear that, by so doing, the Congress intended to prevent cable systems from engaging in marketing efforts that will increase subscribership. (Congress also found that it was in the public interest for cable systems to expand their capacity and programs.) If, as the Commission suggests, systems are permitted to spread large installation fees over several months of billing, systems will have the added burden of establishing dual billing systems, a particularly onerous burden for the smaller systems. CATA urges the Commission to adopt a system that accounts for installation charges but continues to permit their inclusion in basic cable rates.

Treatment of small systems - MSOs and "independents". In its discussion of how to alleviate the regulatory burdens of the Cable Act from smaller cable systems, the Commission suggests that perhaps it should distinguish between "independently owned stand-alone" systems of under 1000 subscribers and systems of under 1000 subscribers that are owned by a large MSO. It is explained that MSO owned systems may have the advantages of program discounts and access to corporate resources. Perhaps they do. But the fact remains that the arguments the Commission made in favor of giving consideration to small systems pertain regardless of who owns the systems. If it is true that smaller systems have greater costs, that often they have a lower population density, that costs per mile are higher, that rates are lower, then ownership is irrelevant.

As noted above, there are cases where many small systems are owned by an "MSO," indeed where most of an MSO's systems are very small. In such cases, it is not reasonable to assume that small system burdens are alleviated by program discounts and access to corporate resources. This is an area where we urge the Commission to "keep it simple." Smaller systems should be given special consideration in the regulatory process that the Commission will adopt because of the unique problems associated with serving smaller, usually more rural communities regardless of the size of the ultimate owner of the system or the number of systems owned. The problems associated with small community

service are consistent. The treatment of small system operators should be also.

Line extensions. Cable systems have traditionally provided extended service in areas of low population density. It is usually the case that where a cable line must be extended more than a given distance to serve an individual customer or a pocket of customers, the system charges an additional installation charge - a line extension fee. It is only by means of the line extension fee that systems can possibly afford to bring their service to rural or isolated dwellings. Line extension charges are uniform throughout a system, although because of differences in population density, terrain or other factors, they may vary from system to system. Line extension charges are not some exotic, difficult to understand payment, nor are they unique to the cable industry. Telephone, power, and natural gas companies have always charged for extra extension of their service.

In its Notice, the Commission, while not dealing directly with line extension fees, may have unintentionally made the issue a matter of concern in this proceeding. In the context of its discussion of installation costs, the Commission asks, "Should there also be provision for a surcharge when the distance between a customer's premises and the operator's distribution plant is substantial?" (NPRM, para. 69) Later, in its discussion of geographically uniform rate structures, the Commission states, "We do not interpret the statutory mandate for uniform rate structures as precluding reasonable discriminations in rate

levels among different categories of customers provided that the rate structure containing such discriminations is uniform throughout a cable system's geographic service area." (NPRM, para. 113) Finally, in the context of Congress' thoroughly laudable prohibition against discrimination (we all thought we knew what it meant), the Commission seeks comment, "...in particular on whether differences in rates among different classes of customers based on differences in costs of providing services should not be prohibited under this provision." Given the 40-year-old practice of charging line extension fees, this notion is chilling.

CATA suggests that there is ample justification within the four corners of the Cable Act, as the Commission itself has found, to permit "...reasonable discriminations in rate levels among different categories of customers provided that the rate structure containing such discriminations is uniform throughout a cable systems's geographic area." Such a reasonable discrimination would include a different rate for line extensions, if applied uniformly within the cable system's geographic area.

Relationship between basic and cable programming tier rates. The Commission's approach to adopting policies for the regulation of cable programming tiers begins with a discussion similar to that on the regulation of basic tier rates and leads to a similar conclusion - "...that traditional cost-of-service regulation

would not be the best alternative to select as the primary method of regulating rates..." Then, wisely anticipating what many commenters are bound to point out - that historically, rates for cable programming tiers have been used to subsidize artificially low basic tier rates, the Commission notes that there may be a "tradeoff between the severity of the restrictions that may be placed on basic tier rates and rates for other programming services," and seeks comment on how such a tradeoff can best be made. CATA reminds the Commission that this tradeoff works to the benefit of both the subscribers and the cable systems and we urge the Commission to adopt policies that accommodate this long standing practice.

In an effort to be thorough in its analysis, however, the Commission has gone beyond requesting comment on the relationship between basic tier and cable programming tier rates. It asks whether its regulations should be designed to produce low rates for <u>both</u> the basic service tier and cable programming tier - whether, in fact, the regulations should require that systems recover most costs and earn most profits from per channel and per event programming. CATA respectfully notes that regulation of pay services are not contemplated in the Cable Act and are beyond the Commission's purview. The Commission is already burdened with the responsibility of fashioning regulations that may have unforseen, if not devastating, consequences for cable systems and non-premium cable programming services. It should not lightly contemplate extending regulation to other industries, beyond the

scope of the Cable Act. Finally, the Commission must realize that there are many small systems that do not offer pay services, and many others that have the ability to offer only one pay channel. Obviously, for these systems, any scheme that would restrain reasonable profit from any but pay services would foreclose the possibility of any profit at all and must be rejected.

Additionally, the Commission must remain sensitive to the fact that many smaller systems may not, for financial reasons, offer any tiers at all. All services, broadcast, cable programming and, in some instances, even what is considered a "pay" service (e.g. Showtime), are offered in a single package - the most cost-effective way to be able to offer the service in some rural, low population density areas. All of these variables must be taken into account.

CONCLUSION

The Community Antenna Television Association Inc., urges the Commission to consider the special circumstances and needs of small system operators and suggests three specific areas where its action can be most effective. First, the ability of the community to opt out of rate regulation; second, the need for a "benchmark" system that is self-explanatory in the form of a formula allowing the creation of customized zones of reasonableness.; and third, a simplified cost justification procedure that could be conducted at the Commission level based

not on individual system pricing but rather on a showing of reasonableness related to financial performance of the entity as a whole. It also suggests that the Commission adopt procedures for certification and rate regulation by local authorities, and for complaint procedures before the Commission concerning cable programming tier rates, that will permit cable operators to conduct their business with as much certainty and freedom from unnecessary regulation as possible.

Respectfully submitted,

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